

Pham (Migration) [2023] AATA 3722 (20 October 2023)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mrs Hoang Vu Pham
CASE NUMBER:	1928555
HOME AFFAIRS REFERENCE(S):	BCC2014/2395356
MEMBER:	Anne Grant
DATE:	20 October 2023
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 (Partner) visa: • cl 801.221(2) (b), (c) and (d) of Schedule 2 to the Regulations

Statement made on 20 October 2023 at 2:45pm

CATCHWORDS

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse)– parties are validly married – parties have been married for nine years and have lived together for most of that time – parties are in a genuine and continuing relationship – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 65

Migration Regulations 1994, r 1.15, Schedule 2, cl 801.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 7 October 2019 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant applied for the visa on 22 September 2014 on the basis of her relationship with her sponsor. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl 801.221 because the delegate was not satisfied that they were spouses at the time the delegate made their decision.
4. The applicant appeared before the Tribunal on 14 September 2023 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal hearing was conducted in English.
5. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. The issue in the present case is whether the applicant and the sponsor are spouses at the time of making my decision. If so, then I will also consider whether two years have passed since the application for the visa was made.
7. The combined partner visa application was lodged on 22 September 2014. At the time of application, the visa applicant and sponsor provided the following documents to the Department in support of their application:
 - Form 888 witness statement from Shui-Hong Huang, the visa applicant's friend of 2 years, dated 17 June 2014, in support of the relationship;
 - Form 888 witness statement from Quynh Pham, the visa applicant's friend of 3 years, dated 18 June 2014, in support of the relationship;
 - Receipt for homeware purchases issued in the visa applicant's name at Alvina St, Sunshine North, dated 22 July 2014;
 - Receipts from various grocery stores and JB Hi-Fi;
 - Foxtel invoice addressed to the sponsor at Comley St, Sunshine, dated 8 June 2014;
 - Receipt from Ikea furniture addressed to the visa applicant at Comley St, Sunshine, dated 2 September 2013;
 - Wedding banquet menu invoice addressed to the visa applicant and sponsor. A deposit of \$3,399 was paid in full on 17 May 2014;
 - Sponsor's birth certificate and passport showing he is an Australian citizen and was born on 25 November 1993;
 - Certificate of police record no.1 dated 15 May 2014, confirming there is no record of previous conviction against the visa applicant in Vietnam;

- Visa applicant's identity card, household registration, birth certificate showing she was born on 8 July 1981 and a Vietnamese citizen;
 - Visa applicant's statutory declaration dated 16 December 2014. In summary, the visa applicant states she and the sponsor met at a mutual friends' party on 18 May 2013 where they enjoyed each other's company, exchanged telephone numbers and added each other on Facebook. They had their first date on 27 May 2013 and enjoyed each other's company. Despite their age difference, they met regularly during the weekends for dinners, attended parties and went to the beach. During this period, they began to meet each other's family and friends. In mid-March 2014, the sponsor told the visa applicant he has suffered depression in the past two years. He states that his depression has improved significantly since meeting the visa applicant, that his love for the visa applicant has grown so deep he felt so scared of her returning to Vietnam. The visa applicant was very touched the sponsor trusted her enough to share his secret and fear. The parties decided to get married and with the approval of their parents they had a wedding reception on 17 March 2017. They only had a month and a half to organise the wedding, but they were able to celebrate it with family and close friends at Rise Buffet Bar in Docklands. The visa applicant gets along with the sponsor's parents and brother. On 6 May 2014 they officially signed the marriage certificate. The parties receive financial support from their families. The sponsor will finish his degree in June 2014 and once he gets a civil engineering job the visa applicant will complete her degree. She will get a full-time job and they will start saving for a house and to have kids in the future. The visa applicant and the sponsor live at Comley St, Sunshine North with five housemates. They cook, clean and shop together on the weekends. She states their relationship is known by their family and friends, who approve of their relationship.
 - Sponsor's statutory declaration dated 16 September 2014. He provided similar statements as the visa applicant's, from his perspective;
 - Visa applicant's Vietnamese passport with Australian visas and entry and exit stamps;
 - Ceremonial marriage certificate confirming parties married on 6 May 2014, solemnised by Quan Van Tran at Ballarat Rd, Braybrook.
8. The applicant was granted an 820 visa on 4 September 2015. On 1 August 2016, the consideration of the second state of the visa commenced. In support of that consideration, the applicant and sponsor provided the following information:
- Visa applicant's statutory declaration dated 4 March 2017. In summary, the visa applicant states they have a genuine and continuing relationship, that they live together, share the same room and have done so for nearly three years. They hold a joint bank account which is used for daily expenses such as food, bills and other necessary items. Both of their salaries are deposited into this bank account. They do not own any joint properties or assets and rent a shared house with four other tenants. The sponsor is not working at the moment, and the visa applicant works on a casual basis at Airport West as a nail technician. The parties spend time on the weekends going to restaurants, watching movies, taking romantic walks in the city, late night drives and visiting mutual friends. The Visa applicant states she and the sponsor are emotionally dependant on each other, they look forward to seeing each other after long workdays, often text and call each other to check they are both safe and well. The sponsor suffers from anxiety and depression and takes medication for it. He states his mood is uplifted when they are together, feels helpless without her support and his mood plummets when the visa applicant is not around. They draw emotional support from each other and state their relationship is for the long-term;

- Sponsor's statutory declaration dated 4 March 2017. He provided consistent statements as the visa applicant's, from his perspective;
 - Australian National Police Certificate dated 20 January 2017, confirming there are no disclosable court outcomes against the visa applicant;
 - Visa applicant's Vietnamese passport, and driver licence showing she resides at Berkshire Rd, Sunshine North;
 - Sponsor's birth certificate, Australian passport, and driver licence showing he resides at Berkshire Rd, Sunshine North;
 - Marriage certificate, issued by the registry of births, deaths & marriages Victoria, confirming both parties married on 6 May 2014. The service was solemnised by Quan Tran at Ballarat Rd, Braybrook;
 - ANZ Access Advantage bank account statement for account ending *217 in the name of the visa applicant and the sponsor, addressed to Berkshire Rd, Sunshine North. The statements are for the period 2 October 2015 to 4 August 2016; and 2 December 2016 to 4 December 2017;
 - Momentum energy electricity bill addressed to the visa applicant and sponsor at Berkshire Rd, Sunshine North, issued over the period May 2016 to November 2017;
 - Momentum energy gas bill addressed to the visa applicant and sponsor at Berkshire Rd, Sunshine North issued over the period 18 August 2017 to 4 December 2017;
 - City West Water bill addressed to the visa applicant and sponsor at Berkshire Rd, Sunshine North, issued over the period February 2016 to November 2017;
 - Wedding invitations addressed to both parties;
 - Form 888 statements from Phuong Nguyen, the visa applicant's friend of 5 years, dated 29 September 2016, in support of the relationship;
 - Form 888 statements from Hy Nguyen, the visa applicant's housemate of 5 years, dated 19 September 2016, in support of the relationship;
 - Form 888 statement from Quynh Pham, the visa applicant's friend of 5 years, dated 29 September 2016, in support of the relationship;
 - Form 888 statement from Sui Hong Huang, the visa applicant's friend of 5 years, dated 20 September 2016, in support of the relationship;
 - Form 888 statement from Khoa Dang, the visa applicant's ex-housemate, dated 28 September 2016;
 - Photographs depicting the visa applicant and sponsor spending time together and at various social gatherings, including a wedding.
9. On 25 September 2020, the applicant provided the following documents to the Tribunal in support of their application for review:
- Photographs depicting the visa applicant and sponsor dining at restaurants and spending time together at outings during the period November 2019 to July 2020;
 - Photographs depicting the visa applicant and sponsor's home life during the first and second Covid lockdown.
10. On 7 April 2023, the applicant provided the following documents to the Tribunal in support of their application for review:
- Photographs depicting the visa applicant and sponsor's home life, meal gatherings with family, dining at restaurants, purchasing their new car, at outings with each other and with friends;
 - Visa applicant and sponsor's BUPA health insurance certificate, showing the cover start date as 19 December 2022;

- Budget Direct car insurance certificate showing the visa applicant and sponsor as listed drivers, and the vehicle is usually parked at Wright St, Sunshine West. The period of insurance is 20 June 2022 to 19 June 2023.

11. On 10 April 2023, the applicant provided the following documents to the Tribunal in support of their application for review:

- Photographs depicting the visa applicant and sponsor at the sponsor's parents' farm in Castlemaine, taken on 9 April 2023.

12. On 11 April 2023, the applicant provided the following documents to the Tribunal in support of their application for review:

- Photographs depicting the visa applicant and sponsor having at a restaurant on 10 April 2023;
- Joint written statement, undated. In summary, the visa applicant states she met the sponsor at a mutual friends' party on 18 May 2013. These friends are staff of Gloria Jeans Airport West. Around early 2018, the sponsor started working as a barista at Gloria Jeans Airport West. The parties were invited to a party where they had a lot of alcohol and 'hit it off'. They started to see each other more which led to the sponsor staying overnight on multiple nights per week. Although the sponsor was a closed off person when they first met, she started seeing a different side of him, and started falling in love. The sponsor also states that the visa applicant is different than what he first saw. They both felt they could be their true selves around each other. When the sponsor found out that the visa applicant might have to leave Australia because of her visa status, it triggered the sponsor's anxiety and depression when he realised that he might not see the visa applicant again. The sponsor couldn't bear this thought so he proposed, and they got married on 6 May 2014. Their wedding reception was held on 17 May 2014.

The applicants state they purchased a new Toyota car last year and the sponsor is the sole person in the finance payment plan as it was easier to obtain financing options due to the visa applicant's visa status. The visa applicant is the usual driver as she works in Lalor and the sponsor works in South Melbourne so there are more public transport options for him. Where possible, the visa applicant would collect the sponsor from work. They hold a joint health insurance policy which they use for optical and dental benefits. Both parties hold a joint ANZ Access Advantage bank account, which was opened in 2014. This bank account is used for groceries, restaurants, UberEATS and Door Dash food delivery services, for clothing and medicinal purchases. This account has recurring transactions for meal kit subscriptions and Foxtel subscriptions. This joint bank account is used to transfer their share of rent and dining expenses between them. The sponsor transfers half of his rent to this account and the visa applicant would withdraw the money to pay the landlord in cash. The landlord pays the bills. They usually dine out on the weekends with the visa applicants' sister, and they all pay their share for the meal.

They live in a share house along with the visa applicant's sister, who rents an adjoining room. Other housemates come and go. There is no written tenancy agreement but only a verbal agreement as the landlord are their friends. They had two cats but one passed away last year so they now share the care for the remaining cat named "Piggy". The sponsor occasionally cleans the dishes, tidies the room and disposes of rubbish but rarely does other chores as he is lazy and sloppy. The visa

applicant cooks, cleans, disposes rubbish, laundry and maintains the garden. The visa applicant has a Vietnamese cultural mindset that she is expected to take care of chores. It is out of love and appreciation of the sponsor that she takes care of the sponsor.

The sponsor has social anxiety and prefers to stay at home watching movies, TV shows and play games rather than socialising. As a result, they rarely go to social events and choose to spend time with people who are close to them, such as the visa applicant's sister. They don't feel the need to have many friends to be happy and content. The sponsor has a small circle of friends from the gym and at work. These peers know that they are married. Their last major social event they attended together was their friends' wedding in 2017. Their most social activity was driving to Sydney with the visa applicant's sister and friend during the Christmas break. It was a memorable trip so they plan to do it again next Christmas.

The visa applicant gets along with the sponsor's mum, dad and brother well and spend nearly every Christmas and Easter together. The sponsor claimed Centrelink benefits between 2015-2021, declaring he was a student, not working and is married and living together with the visa applicant.

The pandemic was a turbulent time for both. The visa applicant's father passed away mid-2021 and she was stuck in Australia, so she was unable to say goodbye. This continues to trouble her, and she feels a lot of guilt. The visa applicant has been a source of comfort and understands she needs to grieve and process things her way. Their cat "Sagy" passed away in mid-2022 due to an accident. They were both emotionally attached to him so they grieved together, however, the sponsor sunk into a state of depression. The visa applicant helped him process everything and convinced him to go about his usual daily routine. They help each other build emotional resiliency. The sponsor is diagnosed with anxiety and depression. He previously could not and would not do anything but stay at home and didn't study or work for a number of years. He managed to complete his degree and work in the field thanks to the visa applicant's encouragement. The sponsor still struggles with his mental health but is doing a lot better and attributes this to the visa applicant's support.

They plan to have a new house as there are a lot of space constraints for the sponsor to work from home, housemates can be difficult to deal with at times, lack of personal space and they want to start a family.

13. Prior to the hearing, the applicant provided to the Tribunal a number of photographs of them together at home, at the cinema, at a family birthday and eating out.
14. I have had regard to the information and evidence provided in the course of this review, as contained on the departmental file and as provided to the tribunal. I have also carefully considered the evidence given by the parties at hearing, the relevant parts of which are discussed below. I found them to be frank and reliable witnesses.

Whether the parties are in a spouse or de facto relationship

15. Relevantly to this matter, cl 801.221(2)(b) and (c) require that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in

the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant and cl 801.221(b) is satisfied.

16. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a) - (d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

17. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. I accept the evidence in this case that the visa applicant and sponsor married on 7 May 2014 in a civil ceremony attended only by their witnesses. The applicant is 12 years older than the sponsor who was 18 at the time of marriage. Because of this age difference, they felt that the sponsor's family would not approve of the marriage and they were not included in the ceremony or informed of the marriage. Despite several years passing, the parties confirmed at hearing that the sponsor's family is still unaware that they are legally married. However there is no information before me that suggests that there is any reason to consider that the parties were not free to marry. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

Are the other requirements for a spouse relationship met?

18. **Financial aspects of the relationship - including joint ownership of assets; joint liabilities; extent of pooling of financial resources; any legal obligations owed to the other party; any sharing of day-to-day household expenses.**

19. The applicant and sponsor each maintain a personal bank account and have a joint account into which they deposit money to meet groceries. They still live in a share house, but explained that apart from the applicant's sister, they have historically barely known the other tenants as the landlord places them in the room. They rent the rooms, rather than the whole house. The visa applicant generally takes care of the financial side of things. The visa applicant earns less and if she's short of money, she asks the sponsor to make contributions. She wants him to save as much as he can so that they can buy a house. She outlined how one time she begged him to sell some cryptocurrency and he did agree. Soon after it later rose exponentially in value and he missed out on those gains. Since then, she is happy to leave the investing to him. She wasn't aware how much he had in savings, but said that she trusted him to use it for their future together. The sponsor told me that he had saved around \$10,000 invested in cryptocurrency, and that he considers this to be their joint asset. That will be sold when they are able to buy a house. There is a car loan for a car that the visa applicant drives and the sponsor pays. It's around \$500 per month. Rent is \$600 for the room and some

utilities. They do pool their resources even though they have separate accounts. Insurance is paid by the visa applicant because she gets a cheaper rate.

20. The parties do not have any significant assets apart from the car and their furniture, which includes bedroom furniture, a television and computer equipment. They currently live in a shared home with the visa applicant's sister as a co-tenant and also another room which is filled at the landlord's discretion by other tenants. Currently, that room is empty. The parties each knew the cost of rent and described how they both contribute to that cost. They maintain separate bank accounts. They each contribute to the cost of a meal kit which is shared with the visa applicant's sister.
21. Consideration of the financial aspects of the relationship suggests that the parties pool their resources and meet their expenses and costs from those pooled incomes. I accept that the parties' financial arrangements suggest that they have familiarity with their joint responsibilities and future plans, and that they share financial decisions in a manner consistent with them being married partners.

22. Nature of the household - including any joint responsibility for care and support of children; parties' living arrangements; and any sharing of housework.

23. The parties do not have any children. The living arrangements of the sponsor did cause the delegate some concern, and this was understandable. I accept that at the time the delegate made their decision, the sponsor was still staying at his parents' home some nights each week, (including on the night that the delegate spoke to him) and that from his parents' perspective, (because they considered the visa applicant his long-term girlfriend and not his wife or de facto partner) the sponsor still lived at home. I raised this concern with the applicant and sponsor at hearing. The applicant was blunt and said that she found it very difficult for the sponsor to be living at their home most nights but then away from her two or three nights per week; and that his family still didn't know how serious their relationship genuinely is. She gave evidence that she understands why he didn't tell them about the marriage when he was only 18 years old, and it never really seemed the time to tell them after that - it has just never been an issue since then.
24. The sponsor gave evidence that while he was still studying, he did stay at his parents more because it was convenient for him to do that as it was closer to university. He also gave evidence that he suffers from anxiety and found living in a shared home full time with strangers to be stressful. He is happy that the home is now just the three of them, but is keen for them to move to their own home (either rental or purchased) in the future. He gave evidence that even though he was in the past staying overnight at his parents 2 or three nights per week, he still contributed to the shared household costs with the visa applicant. This has all changed since the pandemic. During that time, he worked at his parents and then travelled home each day because he had a separate room at his parents he could use as an office. He now lives full time with the applicant in the room they rent and shared living space with the applicant's sister – and has done so since around early 2020.
25. Consideration of the nature of the household suggests that the visa applicant undertakes the majority of household chores, including washing and cooking for the couple. They have a meal kit delivered each week which they share with the visa applicant's sister. The visa applicant expressed frustration that the sponsor refuses to clean up after himself and is very messy. She said that it caused some arguments for a while, but she was unable to change his behaviour and has learned to live with it more. She gave evidence that he tends to leave messes everywhere for her to clean once she can't bear it any longer.

26. I discussed his messiness and lack of contribution to household chores with the sponsor. He agreed that the visa applicant does all the household cleaning and I noted that this might cause an objective observer to wonder if he was not living as her equal partner but as someone she owed a favour to, perhaps because of the visa sponsorship. The sponsor responded he had never thought of it in that way, but that is definitely not what is happening. He stated that he knows that he should do more to keep their home together clean.
27. After hearing the visa applicant's evidence, I had some concerns that the visa applicant tends to shoulder the entire burden of cooking and cleaning in the shared home. As I put to the sponsor at hearing, his conduct in refusing to clean up after himself, or doing his own laundry could be considered to reflect a lack of equity or respect for his partner – and may suggest that he is using her as his 'maid' rather than his partner. The applicant responded that he has been thinking about this recently and does agree that he should contribute more to the domestic chores.
28. Consideration of the nature of the parties' household suggests that they live together full time now but did not for some years after marriage in an effort to conceal their relationship and marriage from the sponsor's family. On balance, I find that the nature of the parties' household adds a little weight in favour of the parties being in a genuine and committed relationship, albeit one where the sponsor is not contributing usefully to household chores.
- 29. Social aspects of the relationship - including whether parties represent themselves to other people as being married to each other; the opinion of friends and acquaintances about the nature of the relationship; and any basis on which the persons plan and undertake joint social activities.**
30. The parties have provided evidence in the form of statements from friends which state that they consider theirs to be a genuine and continuing relationship. Not all of the statements refer to them as being married. I noted this and the applicant and sponsor each separately explained that because of the complication of his family not knowing their married status, they never really emphasised their marriage to their friends, but present themselves as long term de facto partners. The sponsor explained that he doesn't use the term 'wife' to describe the visa applicant, because of his having been worried about his family finding out about the marriage and so he never got into the habit of describing her as his wife. Nonetheless, he confirmed that everyone he knows socially and even his family, know and consider her to be his long term de facto partner. His parents like the visa applicant and she is included as his partner in family events.
31. I accept that the parties still believe that the sponsor's mother would not approve of the age difference, and that the sponsor was very young when they married, so they decided to keep it a secret. I also accept that since then this presentation has just continued, though of course the sponsor's family is now aware that he is in a long term, de facto relationship with the visa applicant as they have lived together full time since the onset of the pandemic. The sponsor said that once the visa is settled, he wants them to have a formal 're marriage' with his family present so they can more 'properly' move towards the next phase of their life, more settled and confident in the visa applicant's residence. I consider, based on the information and evidence before me, that everyone they know socially, including the sponsor's family, considers them a loving committed couple. The witness who attended the hearing gave evidence that they are in a genuine relationship, and she is going to assist them financially by lending them money so they can buy a home.

32. I note that the sponsor told Centrelink that he is married, and generally describes the visa applicant as his partner, and she does the same. I accept that most people don't ask, but they do occasionally tease about when the parties might get married, given how long they've been together. Consideration of the social aspects of the relationship suggests that important people in their lives and community are aware that they are in a long term committed relationship, and that they are partners – though they may be actually unaware that they are married. The sponsor expressed some shame that this has been the case for so long, largely because of him being anxious and sensitive about his family and their approval. He expressed an apparently heartfelt desire to make their marriage more widely known to his family.
33. Consideration of the social aspects of the relationship weighs in favour of the applicants being in a genuine and committed long term spousal relationship.
34. **Nature of persons' commitment to each other - including duration of the relationship; the length of time they have lived together; degree of companionship and emotional support they draw from each other; and whether they see the relationship as long-term.**
35. The parties have been married for nine years and have lived together for most of that time, though in the early years, the sponsor lived some days each week at his parents, concealing the seriousness of his relationship with the visa applicant. At hearing, they each described how they love and care for their partner and depend on them for emotional support. The parties described how the sponsor has now finished university and is working as an engineer, and that the visa applicant has helped him to adjust to full time employment. They also both described how the visa applicant hopes to qualify as a translator and interpreter in the future, once her visa status is settled. Based on her English skills at hearing, I accept that this is a genuine and viable future plan. I accept that the sponsor will support her when she returns to study to achieve that goal. The parties both also expressed a desire to start a family once they have celebrated a 'remarriage' with the sponsor's family.
36. I am satisfied from their evidence at hearing that the parties each consider themselves to be married and in a long term, loving and committed relationship, and that they provide genuine and significant companionship and emotional support to each other.
37. **Conclusion on the relationship**
38. I have considered each of the aspects of the relationship as discussed above, and am satisfied that the visa applicant and sponsor are in a valid married relationship, that they have a mutual commitment to a shared life together, and that theirs is a genuine and committed relationship. I am satisfied that they live together. Given these findings the Tribunal is satisfied that the requirements of s 5F(2) are met at the time of this decision. Therefore the applicant meets cl 801.221(2)(c). It is more than two years since the application was made, so cl 801.221(d) is also satisfied.
39. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 801 visa.

DECISION

40. The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 (Partner) visa:
- cls 801.221 (b), (c) and (d) of Schedule 2 to the Regulations

Anne Grant
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).